



Written Testimony – HB40

Friday March 6, 2009
3:00 PM
RM 422

Chairman Gebhardt;

The Montana Building Industry Association (MBIA) is the Association of Home builders and related industries in Montana. We have 2300 small business members, employing over 26,000 people across Montana. We have 9 local associations and build between 65 – 80% of Montana's homes each year.

We appear before the committee in support of HB40, as amended in the House of Representatives. HB40 is largely a result of the Water Policy Interim Committee and a consensus process that developed early in this legislative session.

Currently the process of applying for and being granted a new water right in a closed basin is completely unworkable. Over the past 2 years, the DNRC has not granted a single new water right through the process developed by HB831 (2005).

HB40, as amended is an attempt to improve the process. It is our belief that HB40, as amended is the first step in creating a working water right approval process by granting DNRC the authority to preliminarily grant or deny a water right and laying out a defined process that leads to a final decision.

Specifically, HB40:

- Clearly defines "correct and complete" for the purposes of a water right application.
- Creates a 120 day period in which DNRC can hold informal hearings with the applicant and potential objectors.
- Requires DNRC to make a preliminary decision to grant or deny at the end of the 120 day period.
- If the application is granted, the DNRC issues a public notice in which formal objections can be received. If objections are received the parties proceed to a contested case hearing and a final determination is made.
- If the application is preliminarily denied, the applicant has the option of holding a hearing, in front of a new hearings examiner, and make the arguments for why the preliminary determination was incorrect. If the applicant was successful, they proceed to a public notice.

We are supportive of this process because it creates a defined point in which DNRC will preliminarily grant or deny an application and outlines a defined path to a final ruling.



Stewart, HB40

Additionally, we are supportive of the 120 day period for "informal hearings" as we believe this will be helpful in clearing up many objections before the formal process begins. However, we do wish that there was a record kept of these proceedings, as to reduce court costs if a granted water right challenged in district court.

Finally, we believe that providing the option for an applicant to select a new hearings examiner will retain objectivity in the contested case process.

To be clear, HB40 is not a perfect solution. However, we believe it to be an improvement over the status quo. As a result we stand before you in support of HB40.

Sincerely,

A handwritten signature in black ink, appearing to read "Dustin Stewart", is written over the typed name.

Dustin Stewart
Executive Director
Montana Building Industry Association